



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**[RTID 0648-XA522]**

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine**

**Mammals Incidental to Seabird Research Activities in Central California**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Point Blue Conservation Science (Point Blue) to incidentally harass, by Level B harassment only, marine mammals during seabird research activities in central California.

**DATES:** This Authorization is effective from October 1, 2020 through September 30, 2021.

**FOR FURTHER INFORMATION CONTACT:** Amy Fowler, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

*<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine->*

*mammal-protection-act*. In case of problems accessing these documents, please call the contact listed above.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

### **History of Request**

On January 4, 2018, NMFS received a request from Point Blue for an IHA to take marine mammals incidental to seabird and marine mammal research monitoring taking place at three locations in central California. Point Blue's request was for take of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), northern elephant seals (*Mirounga angustirostris*), and Steller sea lions (*Eumetopias jubatus*) by Level B harassment only. NMFS published a notice of a proposed IHA and request for comments in the **Federal Register** on May 7, 2018 (83 FR 20045). We subsequently published the final notice of our issuance of the IHA on July 5, 2018 (83 FR 31372), making the IHA valid for July 7, 2018 through July 6, 2019.

On September 17, 2019, NMFS received an application from Point Blue requesting a letter of authorization (LOA) for take of marine mammals incidental to seabird research activities in central California over the course of five years. We determined the application was adequate and complete on November 26, 2019 and published a notice of receipt of application in the **Federal Register** on December 4, 2019 (84 FR 66379). On June 17, 2020, NMFS received a request from Point Blue for an IHA to take marine mammals incidental to seabird research and monitoring in central California. Point Blue's application was determined to be adequate and complete on August 6, 2020. This IHA is effective for a period of one year from the date of issuance (*i.e.*, October 1, 2020 to September 30, 2021), with the LOA expected to be effective from January 1, 2021 to December 31, 2025.

Point Blue's planned activities are identical to those analyzed in the 2018 IHA, as are the mitigation, monitoring, and reporting requirements described in detail in the **Federal Register** notice of issuance of the 2018 IHA (83 FR 31372; July 5, 2018). The

authorized take numbers for Steller sea lions have increased slightly, while the authorized take numbers for California sea lions, harbor seals, and northern elephant seals are identical to those analyzed in the 2018 IHA. Please see the *Estimated Take* section of this notice for more information.

### **Description of the Activity and Anticipated Impacts**

Point Blue plans to monitor and census seabird populations, observe seabird nesting habitat, restore nesting burrows, and resupply a field station annually in central California. The planned activities occur on Southeast Farallon Island (SEFI), Año Nuevo Island (ANO), and Point Reyes National Seashore (PRNS). Point Blue, along with partners Oikonos Ecosystem Knowledge and PRNS, have been conducting seabird research activities at these locations for over 30 years. This research is conducted under cooperative agreements with the U.S. Fish and Wildlife Service (USFWS) in consultation with the Gulf of the Farallones National Marine Sanctuary. Presence of researchers has the potential to disturb pinnipeds hauled out at SEFI, ANO, and PRNS. The seabird research and monitoring activities planned by Point Blue are identical to those analyzed in the 2018-2019 IHA.

NMFS refers the reader to the documents related to the previously issued 2018-2019 IHA for more detailed description of the project activities. These previous documents include the **Federal Register** notice of the issuance of the 2018-2019 IHA for Point Blue's seabird research activities (83 FR 31372, July 5, 2018), the **Federal Register** notice of the proposed IHA (83 FR 20045; May 7, 2018), Point Blue's application, and all associated references and documents, which are available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take->

*authorizations-research-and-other-activities*. A detailed description of the seabird research and monitoring activities is found in these documents.

#### *Detailed Description of the Action*

A detailed description of the planned seabird research and monitoring activities is found in these previous documents. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices.

#### *Description of Marine Mammals*

A description of the marine mammals in the area of the activities for which take has been authorized, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA for the 2018-2019 authorization (83 FR 20045; May 7, 2018). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature. The 2018 Stock Assessment Report notes that the estimated abundance of California sea lions has decreased slightly, however, neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the “Description of Marine Mammals in the Area of Specified Activities” section contained in the supporting documents for the initial IHA.

#### *Potential Effects on Marine Mammals and their Habitat*

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the previous IHA, which remains applicable to the issuance of this IHA. There is no new information on

potential effects that affects our initial analysis of potential impacts on marine mammals and their habitat.

### *Estimated Take*

Point Blue has been conducting seabird research activities at SEFI, ANI, and PRNS for over 30 years. Under previous IHAs, Point Blue has documented the numbers of marine mammals taken by Level B harassment at each of the research stations. Take estimates are based on take reported by Point Blue in the last five years (Table 1). Takes recorded in all previous monitoring reports were based on occurrences that are consistent with Levels 2 and 3 of the three-point harassment scale (see Table 3). For all species except California sea lions, Point Blue's requested annual take was calculated as the maximum annual recorded take for each species over the last five years (2015-2019) or the authorized take from the most recent IHA, whichever was greater. For California sea lions, the authorized take is identical to the authorized take in the most recent authorization, which is less than the highest year. The recorded take of California sea lions has been decreasing over the past five years, which is why the take numbers from the highest year were not used. However, 32,623 takes of California sea lions by Level B harassment are authorized in order to sufficiently account for any unexpected increases in occurrences of California sea lions such as that which occurred between 2014 and 2015, when the recorded takes went up from around 10,000 to 36,000.

A detailed description of the methods and inputs used to estimate take for most recent IHA is found in the **Federal Register** notices of the proposed and final IHAs for the 2018-2019 authorization (83 FR 20045, May 7, 2018; 83 FR 31372, July 5, 2018) but in summary, the take estimates are based on historical data from the previous five

monitoring reports (2014, 2015, 2016, 2017, and 2018) to generate 95 percent confidence interval maximums (assuming normal distribution) using STATA, a general-purpose statistical computer package.

**Table 1. Reported Take Observations from Previous IHAs**

Species	Reported take observations for all activities						Authorized takes from most recent IHA	Total authorized annual takes by Level B harassment
	2014	2015	2016	2017	2018	2019		
California sea lion	10,048	36,417	23,173	22,752	17,487	10,408	32,623	32,623
Northern elephant seal	145	175	119	202	85	79	239	239
Pacific harbor seal	284	292	175	234	229	82	304	304
Steller sea lion	59	31	32	35	5	61	43	61

In this authorization, the expected number of survey days, and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA. The only change from the most recent authorization is the authorized take numbers for Steller sea lions, which increased based on consideration of reported take numbers from past authorizations.

**Table 2 -- Population Abundance Estimates, Total Authorized Level B Take, and Percentage of Population That May be Taken**

Species	Stock	Stock abundance	Total Authorized Level B Take	Percentage of Stock or Population
California sea lion	U.S.	257,606	32,623	12.7
Northern elephant seal	California breeding stock	179,000	239	0.13
Harbor seal	California	30,968	304	0.98

Steller sea lion	Eastern U.S.	41,638	61	0.14
------------------	--------------	--------	----	------

*Description of Required Mitigation, Monitoring and Reporting Measures*

The mitigation, monitoring, and reporting measures described here are identical to those included in the notice announcing the issuance of the 2018-2019 IHA (83 FR 31372; July 5, 2018), and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are included in this IHA:

To reduce the potential for disturbance from acoustic and visual stimuli associated with survey activities Point Blue must implement the following mitigation measures for marine mammals:

(1) Slow approach to beaches for boat landings to avoid stampede, provide animals opportunity to enter water, and avoid vessel strikes;

(2) Observe a site from a distance, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required (*i.e.*, site surveys must not be conducted if fur seals are present; if other pinnipeds are present, researchers must approach with caution, walking slowly, quietly, and close to the ground to avoid surprising any hauled-out individuals and to reduce flushing/stampeding of individuals);

(3) Avoid pinnipeds along access ways to sites by locating and taking a different access way. Researchers must keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to flush a marine mammal in order to continue conducting research (*i.e.*, if a site cannot be accessed or sampled due to the presence of pinnipeds);



(4) Cease or delay visits if the number of takes that have been authorized are met, if a species for which takes were not authorized is observed (*e.g.*, northern fur seals (*Callorhinus ursinus*) and Guadalupe fur seals (*Arctocephalus townsendi*)), or if pups are present;

(5) Monitor for offshore predators and do not approach hauled out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are present. If Point Blue and/or its designees see pinniped predators in the area, they must not disturb the pinnipeds until the area is free of predators;

(6) Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds;

(7) Conduct seabird observations at North Landing on SEFI in an observation blind, shielded from the view of hauled out pinnipeds;

(8) Crawl slowly to access seabird nest boxes on ANI if pinnipeds are within view;

(9) Coordinate research visits to intertidal areas of SEFI (to reduce potential take) and coordinate research activities for ANI to minimize the number of trips to the island; and

(10) Require that beach landings on ANI only occur after any pinnipeds that might be present on the landing beach have entered the water.

Point Blue will contribute to the knowledge of pinnipeds in California by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing pinnipeds or carcasses, allowing transmittal of the information to appropriate

agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Required monitoring protocols for Point Blue will include the following:

(1) Record of date, time, and location (or closest point of ingress) of each visit to the research site;

(2) Composition of the marine mammals sighted, such as species, gender, and life history stage (*e.g.*, adult, sub-adult, pup);

(3) Information on the numbers (by species) of marine mammals observed during the activities;

(4) Estimated number of marine mammals (by species) that may have been harassed during the activities;

(5) Behavioral responses or modifications of behaviors that may be attributed to the specific activities and a description of the specific activities occurring during that time (*e.g.*, pedestrian approach, vessel approach); and

(6) Information on the weather, including the tidal state and horizontal visibility.

The lead biologist will serve as an observer to record incidental take. For consistency, any reactions by pinnipeds to researchers will be recorded according to a three-point scale shown in Table 3. Note that only observations of disturbance noted in Levels 2 and 3 should be recorded as takes.

**Table 3 -- Levels of Pinniped Behavioral Disturbance**

Level	Type of Response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.

2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

\* Only observations of disturbance Levels 2 and 3 are recorded as takes.

This information must be incorporated into a monitoring report for NMFS. The monitoring report will cover the period from January 1, 2020 through December 31, 2020. NMFS requires that Point Blue submit annual monitoring report data on a calendar year schedule, regardless of the current IHA's initiation or expiration dates. This ensures that data from all consecutive months will be collected and, therefore, can be analyzed to estimate authorized take for future IHA's regardless of the existing IHA's issuance date. Point Blue will submit a draft monitoring report for the 2020 activities to NMFS Office of Protected Resources by April 1, 2021. A final report will be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS, the draft monitoring report will be considered to be the final report.

Point Blue must also submit a draft monitoring report covering the period from January 1, 2021 through the date of expiration of this authorization. This report will be due 90 days after the expiration of this authorization. A final report must be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS, the draft monitoring report will be considered to be the final report. The reports must contain the informational elements described above, at minimum, as well as the raw sightings data.

Point Blue must also report observations of unusual pinniped behaviors, numbers, or distributions and tag-bearing carcasses to the NMFS West Coast Regional Office.

If at any time the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, Point Blue must immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources, and the NMFS West Coast Regional Stranding Coordinator. The report must include the following information:

- (1) Time and date of the incident;
- (2) Description of the incident;
- (3) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- (4) Description of all marine mammal observations in the 24 hours preceding the incident;
- (5) Species identification or description of the animal(s) involved;
- (6) Fate of the animal(s); and
- (7) Photographs or video footage of the animal(s).

Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Point Blue to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Point Blue may not resume the activities until notified by NMFS.

In the event that an injured or dead marine mammal is discovered and it is determined that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), Point Blue must immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the same information

required in the report on unauthorized take. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Point Blue to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that an injured or dead marine mammal is discovered and it is determined that the injury or death is not associated with or related to the activities covered by the IHA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Point Blue must report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Point Blue must provide photographs, video footage, or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

### **Comments and Responses**

A notice of NMFS' proposal to issue an IHA was published in the **Federal Register** on August 28, 2020 (85 FR 53327). During the 30-day public comment period, the Marine Mammal Commission (Commission) submitted a letter, providing comments as described below.

*Comment:* The Commission recommended issuing the IHA to Point Blue, subject to inclusion of the proposed mitigation, monitoring, and reporting measures and contingent on inclusion of a condition in the final incidental harassment authorization stipulating that the final rule, when issued, will supersede the authorization.

*Response:* NMFS thanks the Commission for their recommendation and has included this stipulation in the final IHA issued to Point Blue.

### **Determinations**

The seabird research and monitoring activities planned by Point Blue, the method of taking, and the effects of the action are identical to those analyzed in the 2018-2019 IHA, as is the planned frequency of research site visits within the authorization period. The potential effects of Point Blue's activities are limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activity in the initial IHA, NMFS determined that Point Blue's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.*, less than 13 percent for all stocks). The numbers of California sea lions, harbor seals, and northern elephant seals authorized to be taken are identical to those authorized in the 2018-2019 IHA, while the numbers of Steller sea lions authorized to be taken have increased slightly. However, the increased numbers of Steller sea lions result in only minor increased percentage of stock authorized to be taken (*e.g.*, from 0.10 to 0.14 percent of the Eastern U.S. stock of Steller sea lions) and NMFS has determined that the authorized take is still considered small relative to the relevant stock abundances. The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the estimated abundance of the California sea lion stock decreasing slightly and the increased estimated take of Steller sea lions. Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a

negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) Point Blue's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate monitoring and reporting requirements are included.

### **Endangered Species Act (ESA)**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

### **National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that

would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

**Authorization**

As a result of these determinations, NMFS has issued an IHA to Point Blue for the harassment of marine mammals incidental to conducting seabird research and monitoring activities in central California for a period of one year from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 1, 2020.

**Donna S. Wieting,**

*Director, Office of Protected Resources,*

*National Marine Fisheries Service.*

[FR Doc. 2020-22099 Filed: 10/6/2020 8:45 am; Publication Date: 10/7/2020]